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Supreme Court, U.S.
FILED

No: 961453 JAN 13 1997

CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1996

John J. Scanlin, Citizen

v

Mr. and Mrs. Robert M. Cooper, et al

On Petition For Writ of Certiorari
To The Federal Middle District Court of
Williamsport, Pennsylvania

PETITION FOR WRIT OF CERTIORARI

John J. Scanlin, Pro Se
3200 Lambs Creek Road
Mansfield, Penna., 16933
Phone: 717-662-7110

37 pp

INTRODUCTION

71 year old petitioner comes to this Court both as an individual, and as president and sole incorporator of a not-for-profit humanitarian organization, the World Unicorn Society, Inc., believing that his constitutional rights to own and enjoy private property have been unrelentingly abridged by the several defendants, acting in concert through a 'pressure matrix' effectively to nullify and circumvent lawful government.

Additionally, petitioner believes he has been targeted by this local 'pressure matrix' because of his human and civil rights activism, which is based on, and described in the petitioner's 1977 unpublished, but widely circulated manuscript: "In Search Of New Directions" (ten copies are submitted with this petition.)

While petitioner's right of free expression has not been abridged, he believes he has been victimized and punished for his views and activism by systematized and unrelenting denial of public and governmental services, which are constitutionally, and morally his due as a lawful citizen of the United States of America.

Petitioner believes the named individual defendants, who are local managers and employees of state and federal agencies, and elected and appointed municipal officials, comprise this 'pressure matrix' which nullifies lawful governance and effectively has built a "whites only" community. The petitioner advocating racial and gender fairness has been subjected to 16 years of harassment... even to possible death by drowning because of his social activism.

QUESTIONS PRESENTED FOR REVIEW

1. Has the lawful power of Eminent Domain been used to abridge the private property rights of the Petitioner?
2. Has Petitioner been exposed to unreasonable restrictions by USACE which have endangered his life?
3. Has Petitioner been subjected to unconstitutional harassment by Penna. State Police for purpose of intimidation?
4. Why were the two Penna. State Troopers who criminally charged the Petitioner never identified?
5. Has Petitioner's 1977 manuscript: "In Search of New Directions" been the cause of the harassment lasting (16) years?
6. Has the Petitioner been denied due process in the Middle District Court at Williamsport, Penna.?
7. Did that Court render its opinion based solely on the defective form of original complaint rather than on the substance of the matter?
8. Is Avulsion, due to flood, a valid legal theory; and if so, why was it never mentioned to the Petitioner, by any Respondent, in order that he might regain his massively eroded land?
9. Was an unidentified court clerk's inference of a Masonic conspiracy warranted by the original complaint?
10. Did that inference prejudice the entire case?
11. Why were Respondents Cooper, Koeppel, and Gettle permitted to decline answering a valid one page interrogatory?

John J. Scanlin, Citizen

v

Mr. & Mrs. Robert M. Cooper

U.S. Army Corps of Engineers (USACE)
Richard Koeppel, Allen Gettle,
Craig R. Homesley

Pennsylvania State Police (PSP)
John Toner, Corporal Herbst,
Trooper John Doe #1 and
Trooper John Doe #2

Pennsylvania Department of Transportation
T. Bryant (PennDot)

Penna. Department of Environment Resources
D. Smeal, D.Ericson, R. Yowell, A.Sever, (D.E.R.)
P. Dembowski, & Larry Oliver

Richmond Township Board of Supervisors
Charles Neal, Chairman

Commonwealth Telephone Company
Dale Stone (CTCO)

Corporate Statement: The W.U.S. Inc. is presently financially supported by newly created: Love Across Borders, Inc. Both are Penna., non-profit corporations.

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Table of Authorities

1. The United States Constitution
   (a) Amendment I
   (b) Amendment VII
   (c) Amendment XI
   (d) Amendment XIV

2. Civil Rights Act of 1964-1965:
Sections 1983, 1985 & 1986

3. The Clean Water Act: P.L. 834 Section 404

4 The Streambank Erosion Control Evaluation and Demonstration Act of 1974 Section 32 P.L. 93-251

PETITION
Chronology

1. 1962: Petitioner purchased 17O acres with Lambs Creek as a south boundary.
2. 1965: Creeley, Shick, and Cooper purchased residential properties on Lambs Creek Road, with rear lot lines near creek south bank.
3. 1969: Respondent Cooper purchased partial acre touching creek and became a riparian owner.
4. 1972: June 22, massive creek flood from Hurricane Agnes.
5. 1977: Petitioner, still an absentee owner, produced manuscript: " In Search of New Directions"
6. 1978-1979: USACE under Eminent Domain, purchased 20.79 acres of creekside pasture from Petitioner and gave access easement to remaining 150 acres.
7. 1980: Petitioner relocated to Lambs Creek and began construction of small home.
8. 1981: Petitioner contacted Respondent Koeppel Re: Driveway construction. No response.
9. 1983: Petitioner applied for permits to build bridge and restore 1972 flood stream bank erosion; D.E.R. Larry Oliver visited site.
10. 1984 to 1992: Respondent Cooper, using PennDot trucks and personnel, filled creek flood-way from south bank to prevent stream return to former 1969 channel.
11. 1992: Petitioner wrote letter of complaint to Penna. Transportation Secretary RE: Cooper, PennDot and Richmond Township annual fill dumped into creek.
12. 1994: July 4, Petitioner's emergency aluminum ladder bridge across swollen creek

disappeared; never found.
13. 1994: August 17: Respondent Koeppel advised: Petitioner considering civil law suit. Respondent Craig Homesley visited site. Massive flash flood August 17, 1994 washed out creek dangerously.
14. 1995: April 27, Petitioner was criminally charged by two (unidentified) Penna. State Troopers, summoned by Cooper, for clearing vegetation and saplings in creek gravel bar.
15. 1995: Advised of impending suit, Respondents Gettle, Koeppel and Homesley permit Petitioner rights in easement which were withheld from 1980. Easement is shifted 17 feet to east.
16. 1995: Magistrate Signor, Mansfield Borough, dismissed criminal charges on condition Petitioner sue Respondent Cooper in civil court.
17. 1995: June 27, 1995, Petitioner filed county civil suit and federal civil rights suit vs. several named Respondents.
18. 1995: August 1, Respondent Cooper filed answer to June 27, complaint (10) days beyond limit. He failed to sign waiver, to gain 60 day response time. Petitioner filed default motion.
19. 1995: December, Respondents Cooper, Koeppel and Gettle decline to answer Petitioner's single page interrogatory. Dale Stone of Commonwealth Telephone Co. responded by questioning Petitioner's sanity. He is, now, considered a Respondent.
20. 1996: Judge McClure, on February 21, signed opinion and order dismissing all Petitioner's allegations with prejudice. Original judge Muir filed his recusal on August 28, 1995 because of Masonic conflict.

21. 1996: August 28 and October 16, two appeals to Third Circuit Court in Philadelphia, were denied.
22. Presently: Certiorari appeal to Supreme Court RE: Abridgment of Petitioner's rights in private property, freedom of expression without reprisal, due process and, equal treatment under the Constitution and Civil Rights Laws of 1964-65, sections 1983, 1985 and 1986.

ARGUMENT

Abridgment of Rights in Private Property:

After cooperating with USACE in the Eminent Domain 'taking' in 1979, Petitioner was denied, by unreasonable Koeppel restrictions, the following:

Permission to construct a bridge of reasonable span crossing Lambs Creek. (see AA4)

Permission to place a small retirement business sign in easement. (see AA5). Sign was taken down.

Permission to construct a few parking spaces in easement at roadside. (see AA4)

Permission to park personal car in his easement driveway. (see AA4)

Permission to fence easement at roadside to halt encroachment. Others could park; Petitioner was not permitted to do so. (see AA4)

Most outrageously, during the several days of high water each year, Petitioner had to risk drowning to reach his home while crawling across 20 foot section of aluminum ladder. (see AA1)

Petitioner believes that no citizen in our Democracy should be subjected to such arbitrary power by a local manager of a Federal Agency.

Making the unreasonableness complete, each verbal Koeppel edict was supported by Officer Gettle and Real Estate Manager Craig Homesley from USACE Baltimore Office.

Only the Petitioner's decision to sue, in 1995, produced the permitting letter after sixteen years. (see AA4)

Abridgment of Right of Free Expression without reprisal:

Neither Respondent Koeppel nor Respondent Cooper could have succeeded in their unrelenting harassment of Petitioner without close mutual cooperation. Of far greater importance, the co-operation of Richmond Township Supervisors, all named Penna. D.E.R. Respondents, the named PennDot Supervisor Bryant, and Respondent Dale Stone of Commonwealth Telephone Co., and the named Penna. State Police Respondents, was required to make this Pressure Matrix thoroughly effective during the sixteen years of harassment. Respondent Cooper was Chairman of the Richmond Township Zoning Board, and as alleged on page #4 of original complaint, his civic, political, and fraternal contacts made the harassment of the Petitioner, not only possible, but almost invincible. Petitioner believes the basic motive of the Pressure Matrix was not based on monetary gain, but that it was racially motivated by 'would be" white supremacists who prefer their County remain unsullied by racial minority residents and other undesirables who advocate racial and gender fairness.

Petitioner believes that the views expressed in his 1977 manuscript made him a primary target

for banishment from the Mansfield, Tioga County, Penna. Community.

Denial of Due Process: It is completely understandable to the Petitioner that the Federal Middle District Court would fail to find credibility in the lengthy original complaint. That is the price one must expect to pay when embarking on a "Paul Revere' mission in contemporary America.

But we are a society torn by racial tensions; we prefer to be racially separated, (see AA6, AA7 & AA8) ; we appear to have tired of Affirmative Action after thirty years and we would like our many millions of non-white citizens to disappear.

But each is a citizen; our Constitution does not provide for second class citizenship; and having been the recipient of many societal blessings paid for with taxpayer dollars, simple decency and sense of fair play demand that this Petitioner make an honest attempt to extend to citizens of color the blessings he has received in our free society. If these views are disturbing to some marginal groups in our Nation, it is regrettable...

But that is not good cause for denying a review of this matter, which the Petitioner believes to be a terminal societal cancer,... which scars our individual hearts and makes a mockery of our founding Declaration that 'all men are created equal'. Petitioner believes a trial by jury is the democratic way of facing the euphemism: "We are not racist; ... we just feel that each should live among his own kind."

Equal Treatment Under The Law: Petitioner's, age and single status, coupled with his human and

civil rights activism, makes him an easy mark for a Pressure Matrix. His only hope of assistance is through even handed police protection. But when the State Police abdicate their sworn duty, and their objectivity, issuing criminal chargings on demand, the Petitioner only has hope of redress in the Court.

Petitioner submits that he is not a criminal and had never been criminally charged before discussing his 1977 Manuscript, admitting his (20) twenty year support of the ACLU, and stating his reluctance to join any fraternal society which practices blackballing, meetings closed to the public, and racial and gender exclusion,... with Respondent Cooper in 1980. Petitioner submits such views, and actions, should not be ground for denial of public services and intimidation by State Police.

RE: PRO SE ELIGIBILITY

In the transmittal letter of Jan. 21, '97 from this court requesting corrections, (Rowland, etc. v CA Men's Colony) was cited in denying pro se representation to the World Unicorn Society, Inc.

In this 5 to 4 decision, the Advocacy Association was seeking pauper status for the Assoc. It was denied, and both the majority and dissenting opinions discussed the meaning of 'person'. The matter being resolved largely on the question of 'who in an assoc., or corporation composed of many officers, members or shareholders could sign an affidavit, or take an oath binding on all members.

Petitioner believes none of the conditions deliberated in 'Rowland' is relevant to the instant

matter, for the following reasons:

A. Neither petitioner herein has sought pauper status.

B. Petitioner Scanlin is a person.

C. The W. U. S., is a lawful Penna. non-profit corporation having only one incorporator, and no shareholders; therefore the question of 'who speaks for...(swears for)' the group cannot be in dispute; there being only one (1) incorporator and no other officers shown in the corporate charter.

D. The practical matter appears to be:

John J. Scanlin, 'person' is limited by his mortality; in the corporate form, he is not. Since only one and the same person is involved, petitioner believes both petitioners should be permitted to participate.

LAYMAN'S ANALYSIS
CASE No.4:CV-95-1012

Petitioner believes (4) constitutional issues are involved:

a. Abridgment of private property rights.

b. Freedom of expression without government reprisal

c. Denial of due process by Feb. 21,1996 opinion and order

d. Denial of equal treatment under the law, by both government agencies and the Middle District Court of Pennsylvania.

Petitioner believes he has demonstrated patience in this (16) year matter which could have been resolved in (72) hours among rational people, if all cards had been laid face up on the table. But

Petitioner believes we have been shadowboxing, and therefore a rational arbitrated solution was never possible.

This discussion is keyed to the first (8) pages of our supplemental document titled: ADDITIONAL APPENDIX. The numbered pages filling out the additional appendix, are relevant to the tale but unnecessary to recognition of the paradox.

The Petitioner, having pecked at his Sears 'Forecast 12' ancient typewriter for several days, finally surrenders to the virtual reality of the experience. In true 'who done it' fashion, the tale is told in flashback, with an unlikely cast of characters rivaling Bogie, Sidney and Peter in the Maltese Falcon of black and white cinema.

The protagonist, Hermit Jack, admitting that he cannot produce a rational analysis as promised, abdicates his civic duty, requesting the reader to find the thread of the tale in the first (8) numbered pages, which begin, fittingly, with an elaborate map embellished with highlights in color and many notations, elevations and compass directions.

The scene now shifts to the flashback: ...On a dark night of bone chilling torrential rain, fifty young airmen are riding the olive drab military bus back to Keesler Field, from the town of Biloxi, Mississippi. There is not a word of conversation; each young G.I. absorbed in his personal reverie. The war to save Democracy from the Huns and the Japs is not going well; Some aboard might never celebrate their nineteenth birthday.

Suddenly the tired old bus lurches to the shoulder of the dark country road, ...but for a long

few minutes nothing happens. Restless foot shifting is the only sound from the fifty seated young airmen; it blends ominously with the metallic drumbeat of the rain on the roof.

The front door is flung open by the obese civilian driver, and a little lady weighing at most, 80 pounds, barely five feet tall and possibly 75 years old mounts the two steps to place her coin in the box near the driver. She lurches unsteadily down the aisle with her tattered oilcloth shopping bag as the driver accelerates. A young G.I. sitting in an aisle seat midway down the aisle rises to offer the little lady his seat. Remember, this was an earlier time, he had been admonished daily, by the nuns in the Holy Family Parochial School to show respect to the elderly, especially ladies. In a fleeting glance he imagined he saw her eyes of quiet dignity cloud over with fear. She had barely adjusted her shopping bag at her knee, when the bus again lurched to the road shoulder. This time the door was not opened; no one entered. The motor idled, 100 feet shifted and the cold rain pelted the roof and windows. Faintly, the standing airman felt a brush against his outstretched arm holding on to the 'standees' pole. The little lady had risen and was again making her way down the aisle. The G.I. glanced to the front of the bus; framed in the circle of the convex mirror above the driver's head he witnessed a transforming sight: the naked face of hatred. Confused, the lad tried to avert his eyes, but they rested on the little black line painted directly in front of his nose above the windows just below the patriotic curved posters reminding that: "A slip of the lip can sink a ship." Young naive Hermit Jack had been introduced to segregation and to irony. He had given

his seat, forward of the color line to the little black skinned lady. This was 1944, in Mississippi, segregation was the law of the land; the driver would not move the bus until the lady was in her proper place. Not a word was spoken by anyone in the entire happening; the bus once again rumbled onward into the night. No airman rose to offer his seat; she rode a few miles then stepped off into the darkness and the rain. Fifty young men were on their way to war; possibly to their death, in defense of freedom. Only one it seems recognized the irony.

SUMMATION

Note: There is numerology involved in this tale also. The numbers one and seven. Serendipitously they are again involved in reverse order. At 17, enlistment in the Army Air Force; at 71 petitioning the Supreme Court. Two vastly different efforts, but still bound by the common thread. In all the intervening years, and myriad experiences, Jack's defining moment was lived on the bus from Biloxi. The question: "when will we ever learn?" seemingly will not go away.

After reading to page (7AA) the reader might suppose that the matter being appealed involves real estate, specifically a riparian creek centerline boundary. But turning to the following page we find that paradoxically, it is about another lady on another bus. This happening was a defining moment, not only for Jack, but for our entire society. It presently underpins the civil suit being appealed. It remains unacknowledged by all Respondents. But if we persist in employing euphemisms to cover our 'hardness of heart', the Petitioner believes we will soon have transformed the United States of America into the not-so-

pleasant nation of 'Euphemasia, North America'. If we love our children and grandchildren, this is hardly a fitting legacy.

The petitioner wishes to thank the members of the Court, and all opposing Counsel and their staff, for the kindness, patience and attention shown to this pro se petitioner, who, like the Man from La Mancha, refuses to remain prostrate after being smote unrelentingly by his (Rational?) government at every level.

Petitioner's Request

Petitioner asks that the Supreme Court adjudicate the several matters of avulsion, and false criminal charging, which are interlocked and are the key to determining the riparian boundary, in a creek under purview of (USACE).

If this is not the purview of the Court, the Petitioner asks that an order be issued requiring a trial by jury be held as soon as possible, in Harrisburg, Pennsylvania, to permit an open, disinterested verdict in a civil trial.

Petitioner asks that the World Unicorn Society, Inc be permitted to remain a Petitioner.

Respectfully submitted,

John J. Seanlin,Pro Se.

Date: 3-10-97

APPENDIX

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNA.

No: 4:CV-95-1012
Memorandum Filed by Judge
James F. McClure, Jr.
Feb.21, 1996

BACKGROUND: Plaintiffs Scanlin & The World Unicorn Society., Inc. filed this action alleging the violation of their civil rights over a period of fifteen years, spanning years 1979 to 1995. Some of the allegations predate 1979.

Plaintiffs bring this action against Mr. & Mrs. R. Cooper, neighboring landowners; Richmond Twp. the (USACE); Penna. D.E.R.; PennDot; Pa. State Police, (PSP) and against various employees and agents of those state and federal entities.

Plaintiff owns property and resides along Lambs Creek in Richmond Twp., Tioga County, Pa. Plaintiffs' allegations against the defendants are many and varied. His complaint consists of a narrative describing, in brief, his life, his political views and objectives and a history of his relationships with the various defendants.

From that narrative we cull the following allegations which appear to have some bearing on the claims alleged: The Coopers share a common boundary with Scanlin --- the boundary being the centerline of Lambs Creek. Plaintiff alleges that over the years the Coopers have conducted a whisper campaign against him because he is an outsider to the area and promotes ideas with which they disagree. He alleges that Cooper has used his contacts as a Mason to incite harassment against him by fellow Masons. Plaintiff alleges

that for the past fifteen years, the Coopers have dumped PennDot salt and cinders into the creek bed and have used other PennDot materials and labor to divert the course of the stream, but that plaintiff's complaints have gone unheeded.

Plaintiff alleges that the USACE "trampled" his rights over an eighteen year period by: 1. taking, by exercise of eminent domain, more land than it required in 1979; 2. allowing others to transport a frame chapel across his land in 1973. 3. "ramping" his creek bank, allegedly thereby causing erosion to plaintiff's bank. 4. refusing to cooperate or assist plaintiff in taking measures to stem the erosion of his stream bank. 5. failing to protect plaintiff's rights in an easement; and 6. charging him a $250.00 grant fee for moving his right of way.

Plaintiff alleges that DER, through its employees, defendants Sever, Dembowski, Ericson and Smeal also violated his rights by preventing him from controlling erosion along his stream bank by using tires as rip-rap.

Plaintiff alleges that Penna. State Police, through Sgt. John Toner, have violated his rights by prosecuting him in 1984 for falsifying a vehicle inspection sticker for his "just constructed 1962 VW van."

Plaintiff alleges that PennDot is responsible for "willful damage to the ecology of bucolic Tioga County, for providing, for a period of ten years, large PennDot dump trucks ... to haul and deposit a mixture of grass, salt and cinders, to the property of Defendant Cooper, where it was dumped into the flood plain, then pushed into the Lambs Creek bed, effectively driving the Creek more than (150) feet to the northeast, damaging the private properties

of Creeley, Shick, Scanlin (now deeded to the World Unicorn Society, Inc."
Scanlin's Complaint).

Plaintiff does not make any specific allegation against the Richmond Township Supervisors in the complaints.

Plaintiff's original complaint was augmented by a supplemental complaint filed a month later and by an amended complaint several weeks later. The supplemental complaint added further allegations against the USACE. With the filing of the amended complaint, plaintiffs sought to add as defendants individual employees of DER. Leave of court was not sought for the filing of either complaint. No leave was required for the filing of the supplemental complaint pursant to Fed. R. Civ. P. 15, (a) because no responsive pleading had yet been filed. Leave was, however, required for the filing of the second amended complaint. In the interest of expediting this matter, leave will be deemed to have been granted nunc pro tunc.

All defendants move to dismiss plaintiff's original and amended complaints pursuant to Fed. R.Civ. P 12(b)(6) for failure to state a claim upon which relief may be granted. For the reasons which follow, the complaint will be dismissed as against all defendants. Plaintiffs motion for summary judgment based upon defendants' alleged failure to respond to the complaint will be denied. All other pending motions will be denied as well.

DISCUSSION

Rule 12(b) motion. In deciding defendants' motion, we are "required to accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after con-

struing them in the light most favorable to the non-movant'__Jordan v. Fox, Rothschild, O'Brien & Frankel, Inc. 20 F 3d 1250, 1261 (3d Cir. 1994. "In determining whether a claim should be dismissed under Rule 12(b) (6), "we look" only to the facts alleged in the complaint and its attachments without reference to other parts of the record." Id. Dismissal is not appropriate unless "it clearly appears that no relief can be granted under any set of facts that could be proved consistently with the plaintiff's allegations" Id.

Section 1983 claims asserted:

Although plaintiff disavows any intention of asserting a section 1983 claim, he asserts over and over again that his constitutional rights have been violated by defendants. (See record document no. 38, p. 2.) The only vehicle for asserting violation of the same is section 1983, or in the case of federal defendants, a Bivens action. Bivens V. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

To recover under section 1983, the plaintiff must prove that a person acting under color of state law deprived him of rights, privileges, or immunities guaranteed by the Constitution or the laws of the United States. Pokrandt v. Shields, 773 F. Supp. 758 765 E.D. Pa. 1991.

Much of the plaintiffs' allegations and discussion of the claims alleged consist of urgings for government inquiry into local and state government practices in Tioga County. Plaintiffs misapprehend the purpose of civil litigation. It cannot properly be used as a tool for probing vague allegations of wrongdoing in a certain community by elected or appointed officials, or

government employees. Allegations must be tied to the violation of specific, legally recognized rights of the complaining plaintiffs. A defendant's conduct must have a close causal connection to plaintiff's injury for section 1983 liability to attach. Martinez v California, 444 U.S. 277, 285 (1980). Further, negligent conduct is not actionable under 1983. Davidson v. Cannon, 474 U.S. 344, 347-48 (1986), and Daniels v. Williams, 474 U.S. 327, 328 (1986). Only the purposeful violation of recognized federal rights is actionable.

Thus, to the extent that the plaintiffs seek a general government inquiry into alleged wrongdoing by federal, state, and local officials in the Tioga County area over the past 18-20 years, he fails to assert any viable federal claim and his claims must fail.

Statute of Limitations: Nearly all of the individual claims asserted are barred by the statute of limitations applicable to section 1993 claims filed in this Commonwealth. Claims arising under section 1983 are subject to a two year statute of limitations. Any claims based on events which predate the filing date by more than two years are time-barred. Federal courts apply the state personal injury statute in 1983 actions. Wilson v Garcia, 471 U.S. 261, 276-80 (1985) Pennsylvania's statute of limitations applies here, and under it, the time limit for filing a section 1983 claim is two years. Smith v City of Pittsburgh 764, F. 2d 188, 194(3d Cir. 1985),cert. denied, 474 U.S. 950 (1985) and 42 Pa. Cons. Stat. Ann., 5524.

When the cause of action accrues on a section 1983 claim is a question of federal law. Albright v Oliver, 127 L. Ed. 2d 114,128 n. 6 (1994),

(Ginsburg J. concurring). In general, section 1983 claims accrue when the facts which support the claim are, or should be apparent to a person with a reasonably prudent regard for his rights and when the identity of the person or persons responsible for the alleged violation is known or reasonably should have been known to the plaintiff. McMillian v Johnson, 1995 Westlaw, 21963 (M. D. Ala. Jan. 17, 1995), citing Mullinax v McElhenney, 817, F 2d. 711 716 (11th Cir. 1987.) With respect to most of the claims alleged here, the cause of action, if any exists, accrued when the events occurred, well beyond the two year period preceding the filing of this action.

Plaintiff argues that certain claims are not subject to dismissal as untimely because, although the actions of the defendants pre-date the filing by more than two years, their effects persist. He argues specifically that although the defendants placed the concrete slabs in the creek more than two years before this action was filed, their continued presence continues to cause further damage to his stream bank. Arguments along these lines have been rejected by the United States Supreme Court. In Delaware State College v. Ricks, 449, U.S. 250, 256-57 (1980), the Supreme Court rejected the contention that because the effect of an action was felt or manifested within the statutory period, plaintiffs action should be deemed timely because it was felt or manifested. The Supreme Court held that the statute begins to run from the date of the allegedly wrongful act, not from the date when its consequences are felt.

Only a few specific events are alleged to have occurred within the two year period immediately preceding the filing of this action.

Plaintiff alleges that the Coopers, through or with the assistance of PennDot, have continued to dump debris into Lambs Creek, causing further erosion of plaintiff's stream bank. Plaintiffs allege that on April 27, 1995 the Coopers were responsible for initiating "two unsupportable" criminal complaints against him, both of which were later dismissed. Finally, plaintiff alleges that he has been denied the assistance of DER or the federal government in solving the erosion problem along his stream bank.

We discuss below the problems and difficulties inherent to the viability of each of these claims. One problem which nearly all of these claims share is plaintiff's failure to allege them in the pleadings. The possible existence of such claims is mentioned only in briefs and other filings, making it exceedingly difficult for either the court or defendants to determine whether they are intended to form part of the basis for the claims asserted in this action or are recited merely as background.

Scanlin's reference to the criminal charges filed against him is a prime example. This incident is mentioned only in the briefs (record document No. 57). Further it is recounted, then in the next paragraph seemingly discounted as a basis for the claims asserted here. Plaintiff cites it as a basis for denying defendants' motion to dismiss all claims as time-barred, then states "but the far more serious condition of 15 years of harassment by defendants Cooper, enlisting managers of a Federal Agency, professionals of a State Agency DER ... many of whom will be shown to be members of Masonic Lodges 247 and 317--- cries out for a hearing in a Federal Court."

(Record document no. 57 at p. 2)

Scanlin then goes on to state that his reference to 'the unwarranted criminal. charges detailed in the above Par. I are easily seen as a metaphor for the far more serious issue: The unrelenting effort by Defendants Cooper to silence the human rights and civil rights messages of Plaintiffs Scanlin and the World Unicorn Society." (Record document no. 57 at p. 2)

Although we are acutely aware that the pleadings of pro se plaintiffs must be liberally construed with an eye toward preserving any potentially viable claims, there are limits to such construction. Plaintiffs have filed several complaints. Their original complaint consisted of a narrative supplemented by voluminous attatchments consisting of items ranging from photographs of the stream bordering plaintiffs' property to a publication of the Unicorn Society espousing its views of and hopes for the world order.

It seems to this court, that the requirement of plaintiffs have an obligation fairly to apprise the defendants and the court (which has the task of separating viable from non-viable claims) of the essential factual bases for their claims, i.e. the circumstances about which they are complaining and what relief they seek for the same.

Plaintiffs' pleadings consist of a narrative relating Scanlin's eighteen-year relationship with neighbors and government officials, at several levels. Further, much of what later filings reveal to be the possible basis for plaintiffs' claims are not included in the pleadings at all but merely discussed in briefs and various other documents filed. To further compound matters, much of what plaintiffs discuss, allege etc. and what would

appear to be the basis for their claims, is disavowed by plaintiffs themselves as a basis for the filing of this action. For example, much of plaintiffs' discussion about this case, the claims pled, etc. revolves around the erosion problems along the stream bank and Scanlin's frustration with the actions of neighboring landowners, DER's and PennDOT's alleged complicity in the same, and plaintiffs' frustration with the apparent unwillingness of the USACE to become involved and commit funds and resources to resolving the problem. That impression is confounded, however, by statements made in the "joint case management plan" submitted by plaintiffs which provide: "Plaintiffs sincerely believe distributed writings and annual 'SEEKER AFTER JUSTICE' award to minority recipients have, in large measure, provoked Defendant Cooper actions [sic] toward Plaintiffs; Cooper has enmeshed Gov't. Agency employees into the matter and the creek problem is only the device and metaphor for the friction." (Record document no. 40 at 12.30)

To demand that the court and/or the defendants cull from numerous filings whether any event which happened to or affected plaintiff over the years forms the basis for a viable federal claim is beyond the realm of reason. It is the plaintiffs who are bringing these claims, and it is not unreasonable to expect them, at minimum, to identify for the benefit of the defendants and the court what events over the course of twenty years of Scanlin's lifetime, he complains of as being a violation of his federal rights.

Having thus determined that we will not presume intent to assert a federal claim on the basis of events or incidents mentioned only in passing

or as examples or metaphors of an allegedly larger problem, we will nevertheless address the potential viability of claims tied to specific incidents which occurred within the limitations period.

Alleged dumping in Lambs Creek:

Plaintiffs allege that neighboring landowner Robert Cooper has borrowed, taken, or received cinders and various debris from PennDOT which he has then dumped into the creek which borders both properties, causing further erosion damage to plaintiff's creek bank.

Although these allegations may assert a basis for a state tort action, they do not state a violation of any federal constitutional right. Plaintiffs' remedy, if any exists, lies in an action in state court.

Alleged denial of federal and state assistance to remedy erosion problems:

Plaintiffs allege that within the past two years, they have been denied the assistance of DER or the USACE in remedying the erosion problem along Lambs Creek. Such denials are not a violation of plaintiffs' constitutional rights. The only arguable connection to any federally protected right would be a possible denial of plaintiff's right of due process guaranteed by the Fourteenth Amendment. However, such a claim hinges on plaintiffs' ability to establish a property interest in the benefits to which he claims he is entitled. There are no allegations which would support such a showing here.

Alleged criminal complaints:

Plaintiffs allege that on April 27, 1995, the Coopers were responsible for initiating two "unsupportable" criminal complaints against him, both of which were later dismissed. The United States Supreme Court ruled in Heck v. Humphrey,

129 L.Ed.2d 383 (1994) that a civil rights plaintiff cannot maintain a cause of action arising out of a state criminal charge, unless and until he can demonstrate that the conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Id. at 394. The Court analogized such claims to the tort of malicious prosecution, one element of which is a showing that the underlying criminal proceeding terminated in favor of the accused.

Here, plaintiff arguably satisfies that criterion by alleging that the charges filed against him were dismissed. However, he appears to be alleging such claims against the Coopers, private citizens, not against the local officials responsible for carrying out the prosecution. Such claims are viable under section 1983 only if plaintiff can establish that the Coopers conspired with state or local officials to bring about a baseless prosecution. Such allegations are lacking.

Conspiracy allegations:

Plaintiffs' claims against the Coopers for the violation of their civil rights can survive only if supported by allegations that the Coopers, private citizens, conspired with state actors to deprive plaintiffs of their federal rights. The closest which plaintiffs come to making such allegations are averments that Robert Cooper is a Mason, as are many state policemen and other state employees. Plaintiffs argue that this common membership, along with plaintiffs' interpretation of Masonic policies and tenets are proof that Masons use their membership to affect or alter state

policy.

While it is true that heightened pleading requirements no longer apply to civil rights claims, or by implication, to allegations of conspiracy, Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163 (1993), some factual averments must support a contention that a private citizen conspired with a state actor. Such averments must consist of more than speculation based on the mere fact of membership in the same organization or social contacts.

Claims asserted against Commonwealth agencies:

Plaintiffs' civil rights claims for monetary damages against the Pennsylvania State Police, PennDOT, and DER are subject to dismissal on another ground as well. Commonwealth agencies are not subject to such relief under the United States Supreme Court's ruling in Will v. Michigan, 491 U.S. 58 (1989).

Actions filed against a Commonwealth employee in his or her official capacity for monetary damages are likewise barred on Eleventh Amendment grounds, Edelman v. Jordan, 415 U.S. 651, 662-63 (1974).

The only such claims which are permitted against a Commonwealth agency are those for prospective injunctive relief.

Punitive damages:

Punitive damages are not recoverable against a municipality. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 266-68 (1981). See also: Fletcher v. O'Donnell, 867 F.2d 791 (3d Cir. 1989); Reitz v. Persing, 831 F.Supp. 410, (M.D.Pa. 1993) and Carroll v. Bristol Township, 827 F.Supp. 332 (E.D.Pa. 1993).

Plaintiff's claims for punitive damages against the Commonwealth agencies and against state employees are subject to dismissal on that ground. See Brandon v. Holt, 469 U.S. 464, 467-77 (1985).

State claims:

It is apparently plaintiffs' intention to assert only federal claims, although this is not entirely clear from the pleadings and other documents before us.

If any state claims are alleged, they are dismissed. No basis for the exercise of diversity jurisdiction is alleged, and state-based claims cannot otherwise stand in this court. Because no federally-based claims survived and this action is not yet past the pleading stage, we decline to exercise supplemental jurisdiction over state claims which it is plaintiffs' intention to assert before this court.

Plaintiffs' motions for default or summary judgment:

Plaintiffs move for default or for entry of summary judgment against various defendants on the grounds that they failed to file a timely response to the complaint. All defendants against which plaintiffs so move did, in fact, file a timely response to the complaint in the form of a Rule 12(b) motion. Plaintiffs' motions for default or summary judgment against the same will, therefore, be denied.

Leave to amend denied:

Plaintiffs have already amended and/or supplemented the complaint twice. The last amendment was filed after defendants moved to dismiss, alerting plaintiffs to potential defects in his pleadings, which have nonetheless gone unremedied. Moreover, most of the defects iden-

tified by this court as a basis for dismissal cannot be remedied by further amending the pleadings. Most of plaintiffs' claims are time-barred. Since the defects in the claims dismissed lie in the nature of the claim asserted, not in the insufficiency of the facts pled in support of those claims, no purpose would be served by granting leave to further amend. Leave to amend will, therefore, be denied, and the complaint will be dismissed with prejudice.

"s/ _____"
James F. McClure, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

JOHN J. SCANLIN, et al. : 4:CV-95-1012
Plaintiffs : (Judge McClure)

vs.

MR. AND MRS. ROBERT COOPER, et al.,
Defendants

ORDER

February 21, 1996

For the reasons stated in the accompanying memorandum, IT IS ORDERED THAT:

1. Defendants' motions to dismiss, consisting of

a) a Rule 12(b) motion by defendant Richmond Township (record document no. 17);

b) a Rule 12(b) motion by defendants Mr. and Mrs. Cooper (record document no. 18);

c) a Rule 12(b) motion by the Pennsylvania State Police, the Pennsylvania Department of Environmental Resources and the Pennsylvania Department of Transportation (the Common wealth defendants) and their employees named as defendants (record document no. 36);

d) a Rule 12(b) motion by the Commonwealth defendants to dismiss plaintiffs' second amended complaint (record document no. 48);

e) a Rule 12(b) motion by the United States Army Corps of Engineers to dismiss plaintiffs' complaint (record document no. 51);

are granted.

2. All claims asserted against defendants are dismissed with prejudice and without leave to amend.

3. All other outstanding motions consisting of:

a) Plaintiffs' motion for the case to be placed

on an expedited track (record document no. 14);

b) Plaintiffs' motion to add additional defendants (record document no. 15);

c) Plaintiffs' motion for summary judgment in favor of the Coopers (record document no. 22);

d) Plaintiffs' motion for summary judgment in favor of Richmond Township (record document no. 24);

e) Plaintiffs' motion for default against defendants Koeppel and Gettle of the United States Army Corps of Engineers (record document no. 41);

f) Plaintiffs' motion for default against the United States Army Corps of Engineers (record document no. 42);

g) Plaintiffs' motion for an order compelling all defendants "to respond forthwith" (record document no. 59);

h) Plaintiffs' motion for an order compelling the Coopers to produce certain documents (record document no. 61);

i) Plaintiffs' motion for a March, 1996 trial date (record document no. 63);

are denied.

4. The clerk is directed to close the file.

"s/ James F. McClure, Jr."
James F. McClure, Jr.
United States District Judge

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 96-7149

JOHN J. SCANLIN, Citizen and CEO World Unicorn Society, Inc.;
THE WORLD UNICORN SOCIETY, INC., a not-for-profit humanitarian organization
Appellants

V.

ROBERT COOPER, Mr. and Mrs.; U.S. ARMY CORPS OF ENGINEERS;
DEPARTMENT OF ENVIRONMENTAL RESOURCES,
COMMONWEALTH OF PENNSYLVANIA;
PA STATE POLICE; RICHMOND TWP. BOARD OF SUPERVISORS;
PA DEPT OF HIGHWAYS, "PENNDOT";
R. KOEPPEL; A. GETTLE; R. YOWELL; A SEVER; P. DEMBOWSKI; D. SMEAL; D. ERICSON; J. TONER; CORPORAL HERBST; T. BRYANT

On Appeal from the United States District Court for the Middle District of.Pennsylvania
(D.C. No. 95-cv-01012)
District Judge: Hon. James F. McClure, Jr.

Submitted Pursuant to Third Circuit LAR 34.1(a)
August 28, 1996

Before: SLOVITER, Chief Judge
NYGAARD and WEIS, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellants, it is

ADJUDGED and ORDERED that the judgment of the district court entered February 22, 1996 be and is hereby affirmed. Costs taxed

against appellants.

Attest:

P. Douglas Sisk, Clerk

By the Court,
"s/ [signature]"
Chief Judge

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 96-7149

JOHN J. SCANLIN, Citizen and CEO World Unicorn Society, Inc.;
THE WORLD UNICORN SOCIETY, INC., a not-for-profit humanitarian organization
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v.

ROBERT COOPER, Mr. and Mrs.; U.S. ARMY CORPS OF ENGINEERS; DEPARTMENT OF ENVIRONMENTAL RESOURCES, COMMONWEALTH OF PENNSYLVANIA; PA STATE POLICE; RICHMOND TWP. BOARD OF SUPERVISORS; PA DEPT OF HIGHWAYS, "PENNDOT"; R. KOEPPEL; A. GETTLE; R. YOWELL; A SEVER; P. DEMBOWSKI; D. SMEAL; D. ERICSON; J. TONER; CORPORAL HERBST; T. BRYANT

SUR PETITION FOR REHEARING

Present: SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, McKEE, and WEIS, * Circuit Judges

The petition for rehearing filed by Appellant John J. Scanlin, Pro Se in the above-entitled case having been submitted to the judges who participated in the decision of

this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court

Dated: OCT 16 1996

"s/ [signature]"

Chief Judge